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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,459	07/11/2003	Marshall T. Denton	2078-5372US	3865
24247	7590	03/09/2006	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			BARNEY, SETH E	
			ART UNIT	PAPER NUMBER

3752

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/618,459

Applicant(s)

DENTON, MARSHALL T.

Examiner

Seth Barney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the resilient element engaging with a plurality of locations and the bottle being suspended by the resilient member in a receiving socket of a storage device must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 14 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,632,218 to Chaffin et al.

Chaffin discloses a bottle (110) structured to hold fluid, a pump mechanism (135,152) operable to pressurize and eject fluid from confinement inside the bottle, the pump mechanism comprising a pump head (155) displaceable by a human digit through a vertical distance between a first and second elevation, and a conduit (48) between said pump head and a fluid atomizing nozzle (40), the conduit comprising a malleable and deformable portion permitting orientation of a direction of discharge of the nozzle (as shown by the bend of the conduit in Figure 1).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,632,218 to Chaffin et al. as applied to claim 14 above, and further in view of U.S. Patent No. 5,564,665 to Resnick.

Regarding claims 1 and 20, Chaffin discloses an atomizer of the type in which a fluid housed inside a container is ejected through a nozzle comprising a bottle (110) operable as container to hold a fluid, the bottle comprising a generally cylindrical portion. Chaffin does not disclose a resilient element structured to form a self-biased engagement with a wall of said cylindrical portion of the body. Resnick discloses a resilient member (17,19) for holding a cylindrical fluid receptacle (3) in a storage device (1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the resilient members of Resnick to the fluid container of Chaffin in order to more conveniently hold the container for operation. See Figure 1 and column 3 lines 3 to 24 of Resnick.

Regarding claim 2, the atomizer of Chaffin further comprises an extension conduit (48) between a pump mechanism (152) and an atomizing nozzle (40), the conduit malleable and deformable (as shown by the curve in Figure 1) to permit orientation of a direction of discharge from the nozzle.

6. Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,632,218 to Chaffin et al. and U.S. Patent No. 5,564,665 to Resnick as applied to claims 1 and 2 above, and further in view of U.S. Patent No. 6,253,971 to Cobb.

Regarding claim 3, Chaffin as above modified by Resnick discloses all of the limitation of the claim except for a brace. Cobb discloses an atomizer bottle having a conduit (36) and a brace (34a) with a first end adapted for engagement with the bottle (32a) and a second end carrying structure (76) adapted to engage the conduit at a

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location spaced apart distally from the pump mechanism, the brace being operable to resist movement of the nozzle during actuation of the pump mechanism. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the brace of Cobb to the atomizer of Chaffin in order to further support the conduit during actuation of the atomizer.

Regarding claim 4, the first end of the brace is configured and arranged for a clip-on attachment to a portion of the bottle. See Figures 9 and 10 of Cobb.

Regarding claim 5, the second end of the brace is configured and arranged to form a clip on attachment (80) to the conduit. See Figures 9 and 10 of Cobb.

Regarding claim 6, a damping structure (52a) at the second end of the brace would resist motion induced by the pump-mechanism, of a portion of the conduit distal to the damping structure.

Regarding claim 7, the pump mechanism comprises a pump head (129) displaceable by a human digit (155) through a vertical distance between a first and second elevation. See Figure 1 of Chaffin. The brace of Cobb when added to Chaffin would produce a fulcrum location at a third elevation, the third elevation being approximately between the first and second elevations.

7. Claims 8-12, 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,632,218 to Chaffin et al. as applied to claim 14 above, in further view of U.S. Patent No. 6,253,971 to Cobb.

Regarding claims 8 and 15, as abovementioned, Chaffin discloses all of the limitations of the claim except for the brace, while Cobb discloses a brace to support a

conduit. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the brace of Cobb to the atomizer of Chaffin in order to further support the conduit during actuation of the atomizer.

Regarding claim 9, the conduit of Chaffin comprises a deformable distal portion as shown by the bend in Figure 1.

Regarding claim 10, as abovementioned, the addition of the brace supplies a fulcrum point at a third elevation approximately midway between the first and second elevations.

Regarding claim 11, as abovementioned, the brace of Cobb has a clip on attachment. Furthermore, when the brace of Cobb is added to the atomizer of Chaffin the pump head, conduit, and atomizing nozzle is capable of being removed as a unitary assembly.

Regarding claim 12, the pump head of Chaffin is capable of being removed. See Figure 1 of Chaffin.

Regarding claim 16, as abovementioned, the brace of Cobb has first end attached to the bottle and second end attached to a conduit.

Regarding claim 17, as abovementioned, the brace has clip on attachments.

Regarding claim 18, the brace when attached to the conduit would create a proximal end of the conduit that would reduce horizontal deflections of the nozzle during actuation of the pump mechanism.

Regarding claim 19, as abovementioned, the brace of Cobb when added to Chaffin would produce a fulcrum as claimed.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,632,218 to Chaffin et al. in view of U.S. Patent No. 6,253,971 to Cobb as applied to claim 8 above, and further in view of U.S. Patent No. 5,564,665 to Resnick.

Chaffin as modified by Cobb discloses all of the limitations of the claims except for the resilient element. As abovementioned, Resnick discloses such a resilient element as currently claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the resilient members of Resnick to the fluid container of Chaffin in order to more conveniently hold the container for operation.

9. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,632,218 to Chaffin et al. as applied to claim 21 above, and further in view of U.S. Patent No. 6,105,620 to Haberl.

Regarding claim 22, Chaffin discloses all of the limitations of the claim except for a multilumen conduit. Haberl discloses a multilumen conduit. See Figure 1 of Haberl. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the conduit of Chaffin with the conduit of Haberl in order to provide a more versatile conduit that can more easily change shape and retain it.

Regarding claim 23, the conduit of Haberl contains a deformable wire (4) disposed in one conduit (10) of the multilumen conduit.

10. Claims 24 and 25 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,632,218 to Chaffin et al. and U.S. Patent No. 6,105,620 to Haberl as applied to claim 23 above, and further in view of U.S. Patent No. 6,253,971 to Cobb.



Chaffin as modified by Haberl discloses all of the limitations of the claims. As abovementioned Cobb discloses a brace meeting the structure and function as currently claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the brace of Cobb to the atomizer of Chaffin in order to further support the conduit during actuation of the atomizer.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,960,171 to Sanders discloses a resilient ring to hold a bottle. U.S. Patent No. 5,624,090 to Gammelgaard discloses a resilient ring to hold a bottle. U.S. Patent No. 4,669,508 to Neaves discloses a multilumen conduit. U.S. Patent No. 4,463,779 to Wink et al. discloses a multilumen conduit. U.S. Patent No. 5,573,039 to Mang discloses a multilumen conduit. U.S. Patent No. 3,653,556 to Moran et al. discloses a pump sprayer having a flexible conduit and a brace.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (571)272-4896. The examiner can normally be reached on 7:30am-5:00pm (Mon-Fri), first friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571)272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney  
Examiner  
Art Unit 3752

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